

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

**Mark McGriff, Board of Trustees Chairman, and
Doug Robinson, Board of Trustees Secretary, on
behalf of INDIANA/KENTUCKY/OHIO REGIONAL
COUNCIL OF CARPENTERS PENSION FUND;**

**Mark McGriff, Board of Trustees Chairman, and
Greg Hauswald, Board of Trustees Secretary on
behalf INDIANA/KENTUCKY/OHIO REGIONAL
COUNCIL OF CARPENTERS DEFINED
CONTRIBUTION PENSION TRUST FUND;**

**Mark McGriff, Board of Trustees Co-Chairman, and
William Nix, Board of Trustees Co-Chairman, on
behalf of INDIANA/KENTUCKY/OHIO REGIONAL
COUNCIL OF CARPENTERS WELFARE FUND;**

**Mark McGriff, Board of Trustees Chairman, and
Joe Coar, Board of Trustees Secretary, on behalf of
INDIANA/KENTUCKY/OHIO REGIONAL COUNCIL
OF CARPENTERS APPRENTICESHIP AND
TRAINING FUND;**

**Douglas J. McCarron, Board of Trustees Chairman,
on behalf of UNITED BROTHERHOOD OF
CARPENTERS APPRENTICESHIP TRAINING FUND
OF NORTH AMERICA;**

and,

**INDIANA/KENTUCKY/OHIO REGIONAL
COUNCIL OF CARPENTERS,**

Plaintiffs,

vs.

**NEW HORIZON CONSTRUCTION, INC.,
and DAVID B. IVIE d/b/a NEW HORIZON
CONSTRUCTION INC.,**

Defendants.

CASE NO. 2:19-cv-167

COMPLAINT

Plaintiffs **Mark McGriff, Board of Trustees Chairman, and Doug Robinson, Board of Trustees Secretary, on behalf of the INDIANA/KENTUCKY/OHIO REGIONAL COUNCIL OF CARPENTERS PENSION FUND; Mark McGriff, Board of Trustees Chairman, and Greg Hauswald, Board of Trustees Secretary on behalf of INDIANA/KENTUCKY/OHIO REGIONAL COUNCIL OF CARPENTERS DEFINED CONTRIBUTION PENSION TRUST FUND; Mark McGriff, Board of Trustees Co-Chairman, and William Nix, Board of Trustees Co-Chairman, on behalf of INDIANA/KENTUCKY/OHIO REGIONAL COUNCIL OF CARPENTERS WELFARE FUND; Mark McGriff, Board of Trustees Chairman, and Joe Coar, Board of Trustees Secretary, on behalf of INDIANA/KENTUCKY/OHIO REGIONAL COUNCIL OF CARPENTERS JOINT APPRENTICESHIP AND TRAINING FUND; Douglas J. McCarron, Board of Trustees Chairman, on behalf of UNITED BROTHERHOOD OF CARPENTERS APPRENTICESHIP TRAINING FUND OF NORTH AMERICA; and, INDIANA/KENTUCKY/OHIO REGIONAL COUNCIL OF CARPENTERS,** by their attorneys, **PAUL T. BERKOWITZ & ASSOCIATES, LTD.,** complain of Defendants **NEW HORIZON CONSTRUCTION, INC. and DAVID B. IVIE d/b/a NEW HORIZON CONSTRUCTION, INC.,** stating as follows:

COUNT I

1. This action arises under and jurisdiction resides with this Court pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1001, et seq., ("ERISA") and more particularly under Sections 502 and 515 of ERISA, 29 U.S.C. §1132 and §1145, and is brought by Plaintiffs **Mark McGriff, Board of Trustees Chairman, and Doug**

Robinson, Board of Trustees Secretary, on behalf of the INDIANA/KENTUCKY/OHIO REGIONAL COUNCIL OF CARPENTERS PENSION FUND; Mark McGriff, Board of Trustees Chairman, and Greg Hauswald, Board of Trustees Secretary on behalf of INDIANA/KENTUCKY/OHIO REGIONAL COUNCIL OF CARPENTERS DEFINED CONTRIBUTION PENSION TRUST FUND; Mark McGriff, Board of Trustees Co-Chairman, and William Nix, Board of Trustees Co-Chairman, on behalf of INDIANA/KENTUCKY/OHIO REGIONAL COUNCIL OF CARPENTERS WELFARE FUND; Mark McGriff, Board of Trustees Chairman, and Joe Coar, Board of Trustees Secretary, on behalf of INDIANA/KENTUCKY/OHIO REGIONAL COUNCIL OF CARPENTERS JOINT APPRENTICESHIP AND TRAINING FUND; Douglas J. McCarron, Board of Trustees Chairman, on behalf of UNITED BROTHERHOOD OF CARPENTERS APPRENTICESHIP TRAINING FUND OF NORTH AMERICA (collectively referred to as the “Trust Funds”) in order to judicially enforce the obligations owed, and breached, by Defendant **NEW HORIZON CONSTRUCTION, INC.** (“New Horizon”) to the Plaintiffs Trust Funds. More specifically, Plaintiffs Trust Funds seek an order compelling Defendant New Horizon to submit its monthly reporting forms for the period of November 1, 2018 through April 1, 2019 and to pay any delinquent contributions owed for the same period, plus interest and liquidated damages on the delinquent contributions, attorneys' fees and costs incurred by Plaintiffs as a result of being forced to bring this action.

2. Plaintiffs Trust Funds are employee benefit funds within the meaning of and subject to ERISA. The Plaintiffs Trust Funds provide benefits for employees working within this judicial district and are, themselves, administered in this judicial district, with the exception of UBCATF.

3. At all times materials herein, Defendant New Horizon has employed employees within this judicial district.

4. At all times material herein, Defendant New Horizon has been a signatory to a collective bargaining agreement with the Indiana/Kentucky/Ohio Regional Council of Carpenters ("Union") and, as such, is bound by the Plaintiffs Trust Funds' Agreements and Declarations of Trust ("Trust Agreements").

5. Defendant New Horizon breached the Agreements identified in Paragraph 4 of this Count and is in violation of Sections 502 and 515 of ERISA (and 29 U.S.C. § 185) by failing to submit its monthly reporting forms for the period of November 1, 2018 through April 1, 2019 and to pay any delinquent contributions owed for the same period. Plaintiffs Trust Funds also seek an order directing New Horizon to pay the liquidated damages and interest on the delinquent contributions, plus attorneys' fees and costs to the Plaintiffs Trust Funds.

6. Despite Plaintiffs Trust Funds' requests, Defendant New Horizon has failed to pay the contractually and statutorily required monies.

7. Plaintiffs Trust Funds have satisfied all statutory prerequisites as set forth in 29 U.S.C. §1132 (h).

WHEREFORE, Plaintiffs Trust Funds pray this Court order that:

1. Defendant New Horizon submit its monthly reporting forms for the period of November 1, 2018 through April 1, 2019 and pay the delinquent contributions owed for the same period, plus liquidated damages, interest, attorneys' fees and costs to Plaintiffs Trust Funds;

2. Defendant New Horizon pay statutory post-judgment interest on all principal contributions found due by this Order;

3. Defendant New Horizon pays Plaintiffs Trust Funds' attorneys' fees and costs incurred herein;

4. Defendant New Horizon shall be enjoined from future violations of its statutory and contractual obligations to Plaintiffs Trust Funds; and,

5. Such other and further relief that this Court may find just and proper be entered against Defendant New Horizon.

COUNT II

1. Plaintiff **INDIANA/KENTUCKY/OHIO REGIONAL COUNCIL OF CARPENTERS** ("Union") is a labor organization whose duly authorized officers or agents are engaged in representing or acting for employee members within this judicial district.

2. At all times material herein, Defendant **NEW HORIZON CONSTRUCTION, INC.** ("New Horizon") has been engaged in an industry affecting interstate commerce and employs individuals working within this judicial district.

3. This Court has jurisdiction of this action pursuant to Section 301 of the Labor-Management Relations Act, 1947, as amended, 29 U.S.C. §185 ("LMRA").

4. At all times material herein, Defendant New Horizon has been signatory to a collective bargaining agreement with the Union. Included among the contractual obligations between the parties is the requirement that New Horizon submits its monthly reporting forms and transmit its payroll deductions and non-ERISA contributions to the Union's designee.

5. Defendant New Horizon is in breach of its contractual obligations to the Union by failing to submit its monthly reporting forms for the period of November 1, 2018 through April 1, 2019 and to pay the delinquent contributions, interest and liquidated damages owed for the same period to Plaintiffs Trust Funds.

6. Despite the Union's request, Defendant New Horizon has failed to pay the monies identified in this Count.

WHEREFORE, Plaintiff Union prays this Court order that:

1. Defendant New Horizon submit its monthly reporting forms for the period of November 1, 2018 through April 1, 2019 and to pay the delinquent deductions, plus interest and liquidated damages owed for the same period to the Plaintiff Union;

2. Defendant New Horizon pay statutory post-judgment interest on all principal deductions and non-ERISA contributions found due by this Order;

3. Defendant New Horizon pay Plaintiff Union's attorneys' fees and costs incurred herein; and,

4. Such other and further relief that this Court may find just and proper be entered against Defendant New Horizon.

COUNT III

1. This action arises under and jurisdiction resides with this Court pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1001, et seq., ("ERISA") and more particularly under Sections 502 and 515 of ERISA, 29 U.S.C. §1132 and §1145, and is brought by Plaintiffs **Mark McGriff, Board of Trustees Chairman, and Doug Robinson, Board of Trustees Secretary, on behalf of the INDIANA/KENTUCKY/OHIO REGIONAL COUNCIL OF CARPENTERS PENSION FUND; Mark McGriff, Board of Trustees Chairman, and Greg Hauswald, Board of Trustees Secretary on behalf of INDIANA/KENTUCKY/OHIO REGIONAL COUNCIL OF CARPENTERS DEFINED CONTRIBUTION PENSION TRUST FUND; Mark McGriff, Board of Trustees Co-Chairman, and William Nix, Board of Trustees Co-Chairman, on behalf of**

INDIANA/KENTUCKY/OHIO REGIONAL COUNCIL OF CARPENTERS WELFARE FUND; Mark McGriff, Board of Trustees Chairman, and Joe Coar, Board of Trustees Secretary, on behalf of INDIANA/KENTUCKY/OHIO REGIONAL COUNCIL OF CARPENTERS JOINT APPRENTICESHIP AND TRAINING FUND; Douglas J. McCarron, Board of Trustees Chairman, on behalf of UNITED BROTHERHOOD OF CARPENTERS APPRENTICESHIP TRAINING FUND OF NORTH AMERICA (collectively referred to as the “Trust Funds”) in order to judicially enforce the obligations owed, and breached, by Defendant **DAVID B. IVIE d/b/a NEW HORIZON CONSTRUCTION, INC.** (“David Ivie”) to the Plaintiffs Trust Funds. More specifically, Plaintiffs Trust Funds seek an order compelling Defendant David Ivie to submit its monthly reporting forms for the period of November 1, 2018 through April 1, 2019 and to pay any delinquent contributions owed for the same period, plus interest and liquidated damages on the delinquent contributions, attorneys' fees and costs incurred by Plaintiffs as a result of being forced to bring this action.

2. Plaintiffs Trust Funds are employee benefit funds within the meaning of and subject to ERISA. The Plaintiffs Trust Funds provide benefits for employees working within this judicial district and are, themselves, administered in this judicial district, with the exception of UBCATF.

3. At all times materials herein, Defendant David Ivie has employed employees within this judicial district.

4. At all times material herein, Defendant David Ivie has been a signatory to a collective bargaining agreement with the Indiana/Kentucky/Ohio Regional Council of Carpenters ("Union") and, as such, is bound by the Plaintiffs Trust Funds' Agreements and Declarations of Trust ("Trust Agreements").

5. Defendant David Ivie breached the Agreements identified in Paragraph 4 of this Count and is in violation of Sections 502 and 515 of ERISA (and 29 U.S.C. § 185) by failing to submit its monthly reporting forms for the period of November 1, 2018 through April 1, 2019 and to pay any delinquent contributions owed for the same period. Plaintiffs Trust Funds also seek an order directing David Ivie to pay the liquidated damages and interest on the delinquent contributions, plus attorneys' fees and costs to the Plaintiffs Trust Funds.

6. Despite Plaintiffs Trust Funds' requests, Defendant David Ivie has failed to pay the contractually and statutorily required monies.

7. Plaintiffs Trust Funds have satisfied all statutory prerequisites as set forth in 29 U.S.C. §1132 (h).

WHEREFORE, Plaintiffs Trust Funds pray this Court order that:

1. Defendant David Ivie submit its monthly reporting forms for the period of November 1, 2018 through April 1, 2019 and pay the delinquent contributions owed for the same period, plus liquidated damages, interest, attorneys' fees and costs to Plaintiffs Trust Funds;

2. Defendant David Ivie pay statutory post-judgment interest on all principal contributions found due by this Order;

3. Defendant David Ivie pays Plaintiffs Trust Funds' attorneys' fees and costs incurred herein;

4. Defendant David Ivie shall be enjoined from future violations of its statutory and contractual obligations to Plaintiffs Trust Funds; and,

5. Such other and further relief that this Court may find just and proper be entered against Defendant David Ivie.

COUNT IV

1. Plaintiff **INDIANA/KENTUCKY/OHIO REGIONAL COUNCIL OF CARPENTERS** ("Union") is a labor organization whose duly authorized officers or agents are engaged in representing or acting for employee members within this judicial district.

2. At all times material herein, Defendant **DAVID B. IVIE d/b/a NEW HORIZON CONSTRUCTION, INC.** ("David Ivie") has been engaged in an industry affecting interstate commerce and employs individuals working within this judicial district.

3. This Court has jurisdiction of this action pursuant to Section 301 of the Labor-Management Relations Act, 1947, as amended, 29 U.S.C. §185 ("LMRA").

4. At all times material herein, Defendant David Ivie has been signatory to a collective bargaining agreement with the Union. Included among the contractual obligations between the parties is the requirement that David Ivie submits its monthly reporting forms and transmit its payroll deductions and non-ERISA contributions to the Union's designee.

5. Defendant David Ivie is in breach of its contractual obligations to the Union by failing to submit its monthly reporting forms for the period of November 1, 2018 through April 1, 2019 and to pay the delinquent contributions, interest and liquidated damages owed for the same period to Plaintiffs Trust Funds.

6. Despite the Union's request, Defendant David Ivie has failed to pay the monies identified in this Count.

WHEREFORE, Plaintiff Union prays this Court order that:

1. Defendant David Ivie submit its monthly reporting forms for the period of November 1, 2018 through April 1, 2019 and to pay the delinquent deductions, plus interest and liquidated damages owed for the same period to the Plaintiff Union;

2. Defendant David Ivie pay statutory post-judgment interest on all principal deductions and non-ERISA contributions found due by this Order;

3. Defendant David Ivie pay Plaintiff Union's attorneys' fees and costs incurred herein; and,

4. Such other and further relief that this Court may find just and proper be entered against Defendant New Horizon.

Respectfully submitted,

PAUL T. BERKOWITZ & ASSOCIATES, LTD.

By /s/ Paul T. Berkowitz
PLAINTIFFS' ATTORNEYS

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